



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Proposed Amendments to San
José Municipal Code Chapter
4.76

DATE: May 20, 2004

RECOMMENDATION

Approval of an ordinance amending Sections 4.76.290, 4.76.345, and 4.76.820 of Chapter 4.76 of Title 4 of the San José Municipal Code to retroactively provide a 45 day grace period for new businesses, to retroactively replace the financial hardship refund procedure with a financial hardship exemption, to increase the authority of the Director of Finance to compromise claims involving the payment of the business tax, including penalties and interest, and to add a new Section 4.76.746 to retroactively exempt family caregivers and to authorize certain refunds of the business tax, interest and penalties.

BACKGROUND

On April 27, 2004, the City Council considered recommendations made by the Finance Department regarding amendments to the business tax provisions in Chapter 4.76 of the San José Municipal Code. These recommendations resulted from the follow-up on businesses identified by the City's Business Information Management System (BIMS) going back to June 1, 2000, referred to as the "BIMS Lead Project."

The BIMS Lead Project identified a number of businesses that had not timely registered or paid their business taxes, which resulted in additional revenues to the City to date of approximately \$1.6 million in payments received from these businesses for the business tax as well as interest and penalties on the late payments.

In light of Council policies regarding Getting Families Back to Work and Economic Development Strategies, in their April 27 memorandum, staff recommended amending the City's business tax to (1) add a 45 day grace period for new businesses, (2) replace the existing financial hardship refund procedure with a new financial hardship exemption, (3) increase the authority of the Director of Finance to compromise claims regarding the payment of the business tax, including penalties and interest, and (4) add a new exemption for family caregivers who receive compensation for providing care.

Further, the Finance Department recommended that the revisions be made retroactive to June 1, 2003. The City Council accepted the Department's recommendations and

directed the City Attorney to return with an ordinance amending Chapter 4.76 of Title 4 of the San José Municipal Code.

This memorandum outlines these amendments, along with the Finance Department's recommendations on how the retroactive process will be applied and implemented for each of the amendments. In certain cases, the Finance Department recommends that provisions be made retroactive to June 1, 2000. The proposed ordinance will be distributed under separate cover and will go into effect on July 2, 2004. Refunds will be made after the effective date of the ordinance.

ANALYSIS

45 Day Grace Period for New Businesses.

Presently, Section 4.76.290 of the San José Municipal Code requires a new business to pay the City's business tax on or before its first day of operation. The proposed ordinance provides that if the new business owner pays the business tax within 45 days of the first day of operation, the business owner will not be subject to the payment of penalties and interest. This provision only applies to the first time the business tax is owed by a new business.

The proposed ordinance will include an uncodified provision to apply this provision retroactively to June 1, 2003. For the period between June 1, 2003 and July 1, 2004, new businesses that paid their business tax late, but within 45 days of their start date and were subject to the payment of interest and penalties as a result of the late payment, will be eligible for a refund of the interest and penalties paid if these businesses apply for a refund on or before September 30, 2004.

Financial Hardship Exemption.

Under the current financial hardship refund procedure in Section 4.76.345, sole proprietorships can qualify for a financial hardship refund. However, they are required to pay the business tax up front and are entitled to a refund if they can show that their gross receipts did not exceed the poverty level for the preceding year. Under the new procedure, the sole proprietorships are no longer required to pay the business tax up front.

In addition, the term "poverty level" has been redefined to mean the income amount established by the U.S. Department of Health and Human Services as the poverty guideline for a single person multiplied by 2 for the calendar year in which the business tax is due.

Under the existing Section, "poverty level" means the income amount established as the poverty guideline for a single person. Accordingly, the revised ordinance doubles the present poverty level from approximately \$8,980 to \$17,960.

In addition, the term "sole proprietorship" was revised to add a business owned by domestic partners. Accordingly, under the proposed ordinance, sole proprietorship means a business owned and operated by one person or owned and operated jointly by a husband and wife or domestic partners. The term "domestic partners" means two individuals who have a current declaration of domestic partnership on file with the California Secretary of State pursuant to the Domestic Partner Registration Act, and is consistent with the definition of "domestic partners" used for the City's conveyance tax exemption where the transfer of property is between domestic partners.

Under the new hardship exemption procedure, a sole proprietorship is eligible for an exemption if (1) the exemption request is filed with the Director of Finance on or before the date the business tax is due; (2) the exemption request is made upon a form provided by the Director, stating under penalty of perjury that it is anticipated that the gross receipts of the sole proprietorship will be at or below the poverty level for the income tax reporting year in which the business tax is due; and (3) the Director is satisfied on the basis of business records submitted by the sole proprietorship that it is entitled to the exemption.

If the Director determines that the sole proprietorship is not entitled to an exemption, then the business tax for the previous calendar year is due within thirty (30) days of notification by the City. If the business tax is not paid on or before the thirtieth day, penalties and interest begin to accrue pursuant to Section 4.76.290.

Retroactive Application of the New Financial Hardship Exemption Procedure to June 1, 2003.

The new financial hardship exemption procedure will be enacted retroactively to June 1, 2003.

Therefore, any sole proprietorship that would have satisfied the requirements of amended Section 4.76.345 (i.e., whose gross receipts did not exceed the revised poverty level) for the period between June 1, 2003 and July 1, 2004, and paid the City's business tax will be entitled to a refund. The refund request must be filed with the Director on or before September 30, 2004.

In addition, those sole proprietorships that did not pay the City's business tax during the period between June 1, 2003 and July 1, 2004, but can demonstrate to the satisfaction of the Director that they would have been eligible for a hardship exemption, will not be liable for the tax, penalties or interest.

Refunds to the Beginning of the Audit Period of the BIMS Lead Project -- June 1, 2000.

As discussed earlier, under the current provisions of the City's business tax, the sole proprietorship claiming a business tax hardship is required to pay the business tax up front and then claim a refund at the end of the year. If the sole proprietorship failed to pay the business tax, even where its gross receipts did not exceed the poverty level, it was assessed the tax and, if left unpaid, penalties and interest. The BIMS Lead Project identified a number of business accounts which fell into this category.

As a consequence, and after further discussions with the Finance Department, the Finance Department has requested that the proposed ordinance apply retroactively to June 1, 2000, in order to provide relief for sole proprietorships that (1) paid the business tax untimely, thereby incurring penalties and interest, but would have met the then existing poverty threshold, or (2) did not pay the tax but would have met the then existing poverty threshold:

Refund Opportunity for Eligible Sole Proprietorships That Paid Penalties and Interest:

For the period of June 1, 2000 through July 1, 2004, any sole proprietorship, with annual gross receipts under the poverty level in effect for the applicable year, that paid interest and penalties on the late payment of the business tax will be eligible for a refund of the business tax and the interest and penalties if the sole proprietorship can demonstrate to the satisfaction of the Director that it would have been eligible for a refund if it had timely paid the business tax and the sole proprietorship files for a refund no later than September 30, 2004.

Tax Forgiveness for Eligible Sole Proprietorships that Failed to Pay Business Tax

For the period of June 1, 2000 through July 1, 2004, any sole proprietorship, with annual gross receipts under the poverty level in effect for the applicable year, will not be liable for the tax, penalties and interest if the sole proprietorship can demonstrate to the satisfaction of the Director that it would have been eligible for a refund if it had paid the business tax.

Those sole proprietorships that have timely paid the tax and qualify for the hardship exemption will continue to be able to request a refund for a period of 3 years from the date of payment as currently provided under the existing Section 4.76.345.

Family Caregiver Exemption.

Under the current provisions of the Municipal Code, family members who receive compensation for caring for another family member are required to pay the business tax. The revision to Chapter 4.76 adds a new Section exempting family caregivers who provide care services to another family member who is ill and/or elderly. The key terms of the proposed amendments are defined as follows:

“Care services” is defined as assisting a family member with one or more of the following: dressing, feeding, toileting, bathing, grooming, mobility, monitoring or supervising daily living activities, and related tasks.

“Family member” is defined as a spouse, domestic partner, parent, step-parent, aunt, uncle, sibling, child, the lineal ancestor or descendant of each of these (thereby including cousins and grandchildren, etc.) and legal guardian.

Domestic partner is defined the same for the Family Caregiver Exemption as it is for the Financial Hardship Exemption discussed above.

Further discussions with the Finance Department have resulted in the Department’s recommendation that this exemption be enacted retroactively to June 1, 2000, the beginning date of the audit period for the BIMS Lead Project. Accordingly, any family member as defined above who has received compensation for providing care services to another family member, and paid the City’s business tax beginning June 1, 2000, will be entitled to a refund of the business tax, interest and penalties. The deadline to file for a business tax refund is September 30, 2004.

Further, any family caregiver who would have otherwise been eligible for an exemption beginning June 1, 2000 through July 1, 2004, will not be liable for the tax, penalties or interest if he/she can demonstrate to the satisfaction of the Director that he/she qualifies for the exemption (e.g. by submitting a physician’s letter to the Director).

Authority of Director to Compromise Claims for Business Tax.

Section 4.76.820 authorizes the Director of Finance to compromise a claim for business tax (1) where the portion of the claim proposed to be released is \$500 or less, and (2) with the written approval of the City Attorney where the portion of the business tax proposed to be released is \$3,000 or less.

The proposed amendment to Section 4.76.820 authorizes the Director of Finance to compromise claims for business tax, penalties and/or interest, where the portion of the claim to be released is \$5,000 or less and with the City Attorney’s approval where the amount to be released is \$20,000 or less. Otherwise, the Director may only

compromise a claim where the portion of the claim proposed to be released is greater than \$20,000 with the approval of the City Council.

PUBLIC OUTREACH

It is our understanding that the Finance Department intends to actively provide outreach information to notify the business community of the proposed amendments and the related retroactive provisions.

CEQA

Not a project.

RICHARD DOYLE
City Attorney

By _____
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cc: Del Borgsdorf